



POLICE DEPARTMENT

July 7, 2010

MEMORANDUM FOR: Police Commissioner

Re: Detective Louis Caputo
Tax Registry No. 917378
62 Precinct Detective Squad
Disciplinary Case No. 85394/09

The above-named member of the Department appeared before me on April 9, 2010, charged with the following:

1. Said Detective Louis Caputo, assigned to the 62 Precinct, on or about December 27, 2007, January 25, 2008 and August 10, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: with the intent to harass, annoy or alarm his wife, Christine Caputo¹, Detective Caputo told his wife, in sum and substance, on December 27, 2007, "I want you out of the house or I'll kill you," on January 25, 2008, "I'll shoot you or have someone else do it," and on August 10, 2008, "I will kill you and the kids if you take my money." (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
N.Y.S. PENAL LAW § 240.26 (1) – ASSAULT IN THE SECOND DEGREE

2. Said Detective Louis Caputo, assigned to the 62 Precinct, on or about March, 2008 and August 10, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: with the intent to harass, annoy or alarm his wife, Christine Caputo, Detective Caputo in March 2008 dragged his wife down the stairs by the hair, spat on her, kicked her about the body; and on August 10, 2008, grabbed her by the neck and choked her, chased her around the house and threw a telephone at her. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
N.Y.S. PENAL LAW § 240.26 (1) – HARASSMENT IN THE SECOND DEGREE

¹ Christine Caputo, as named in the Specifications, now uses the surname Mastrion.

3. Said Detective Louis Caputo, assigned to the 62 Precinct, on or about January 10, 2008, during a verbal argument with his wife, Christine Caputo, aimed his firearm at her head with his finger on the trigger and stated, in sum and substance, "I wish," placing Mrs. Caputo in fear of physical injury.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
P.G. 204-08, Page 2, Paragraph 7 FIREARMS GENERAL REGULATIONS
N.Y.S. PENAL LAW § 120.14 (1) MENACING IN THE SECOND DEGREE
N.Y.S. PENAL LAW § 240.26 (1) HARASSMENT IN THE SECOND
DEGREE

4. Said Detective Louis Caputo, assigned to the 62 Precinct, on or about August 29, 2008, failed and neglected to immediately notify the Department about an Order of Protection which was issued by Judge McElrath, Richmond County Family Court, in favor of Christine Caputo and served upon him, as required.

P.G. 208-37, Page 4, Additional Date FAMILY OFFENSES AND DOMESTIC
VIOLENCE INVOLVING MEMBERS
OF THE SERVICE

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq.

The Respondent, through his counsel, entered a plea of Guilty to Specification No. 4 and a plea of Not Guilty to the other charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty, in part, of Specification No. 2 (the March 2008 incident) and Not Guilty of the remainder of Specification No. 2, and Not Guilty of Specification Nos. 1 and 3. The Respondent, having pleaded Guilty to Specification No. 4, is found Guilty of Specification 4.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Jennifer Russo, and Sergeants Sally Spinosa, Ralph Ciaravalli, and Charles Cinao as witnesses.

Jennifer Russo

Russo testified that she was a real estate agent involved in the selling and listing of homes. She resides in Richmond County, Staten Island, with her husband and her son. Russo testified that in March 2008, she was neighbors with the Respondent and Christine Mastrion.

Russo stated that one day in March 2008, between 7:00 p.m. and 8:00 p.m., she was smoking in the third floor bathroom of her home when she heard Mastrion yelling, and so she looked out her bathroom window. She saw Mastrion on the Respondent's front porch yelling, crying, and banging on the door. Russo added that she heard Mastrion screaming to the Respondent, "Let me in." She explained that the door was locked and she could see the Respondent's shadow inside his home, but could not see what he was doing. Russo declared that she had observed the incident for approximately five minutes.

Russo testified that while observing the incident, she called out to Mastrion asking, "Are you okay?" Mastrion did not respond, but Russo observed her continue to cry. Russo then saw Mastrion run to the back of the home to try and get in the back door. She did not know if Mastrion was successful in entering through the back door. Russo explained that this was because she had left the bathroom and gone downstairs to get her

husband. Russo and her husband then went outside to look for Mastrion, but by that time Mastrion was inside. Russo stated that five minutes later she went back into her home and upstairs to the previous bathroom window whereupon she saw the Respondent leave. After the Respondent left, Russo saw Mastrion come outside and sit on the front step.

Russo stated that upon seeing Mastrion outside, she went to approach her. Russo declared that Mastrion was crying. She asked Mastrion if she was okay and what had happened. Mastrion told her that she had had a fight with the Respondent and she was upset. Russo stayed with Mastrion for five minutes, but explained that because the weather was cold, she asked Mastrion to come to her house. Russo said that Mastrion agreed and they both went to a third-floor bedroom inside Russo's home. Inside the bedroom, Russo gave her some tissues and again asked Mastrion what happened and if she was okay. Russo testified that Mastrion again said that she had a fight with the Respondent and that she was very upset. Russo also noticed that Mastrion's hands were swollen and she "noticed that something was really wrong."

Russo said she asked Mastrion a third time if she was okay and then Mastrion "broke down" and told her what had happened. Russo stated that Mastrion said that the Respondent had wanted her out of the house because he did not want to be with her. Russo stated that Mastrion said that the Respondent had dragged her down the stairs by her hair, kicked her while still holding onto her hair, and then pushed her out of the house. Russo declared that she asked Mastrion where she had been kicked and Mastrion lifted up her shirt revealing scratch marks at a tattoo "just above her butt" and scratch marks down the right side of her "butt cheek and her thigh." Russo explained that the scratch marks were similar to a thorn scratch, as if you were to "brush yourself up against

a thorn.” She explained that the scratches were “very, very thin” and going straight down – but, the scratches were not like a hand scratch. Russo further stated that there were multiple welt wounds “on her back, by her spine and tattoo, on her right butt and her right thigh, on the outer thigh.” Russo explained that the welt wounds were as if “you were slapped and the blood vessels come to the top of the skin.” Russo also explained that Mastrion had said her hands were swollen as a result of the Respondent pulling her down the stairs. Russo described the hands as being “just very swollen” without “contusions or cuts or anything.”

Russo testified that she stayed with Mastrion for about one hour and that she found Mastrion to be “a wreck” and in pain. Russo then said that Mastrion told her that “this” had been going on for a couple of years and that Mastrion had told no one about “it.” Russo stated that she asked Mastrion if she wanted photos of her to “preserve” the incident. Russo stated that Mastrion agreed and that photos were taken with a camera phone and then downloaded to Russo’s computer at her previous job. Russo explained that she no longer had these photos because Mastrion had told her that she was not going to do anything, so she deleted them from her computer and phone. Russo said she offered medical assistance to Mastrion, but it was refused. Russo explained that Mastrion rejected the assistance because she said she was afraid and embarrassed.

During cross-examination, Russo admitted to being interviewed by a member of the Investigations Unit. Russo acknowledged that during this interview, she told the investigator that she deleted the photos recording the March 2008 incident as a result of being told by Mastrion that she did not want them anymore. Russo said she did not actually know if the incident took place in March 2008 – but added that she knew that it

was either in March or the first week of April.

Russo admitted to having a casual friendship with Mastrion. She stated she had not been inside the Respondent's house during the time period when the incident occurred and she did not know how many people were living in the Respondent's home at that time. Russo said that the Respondent and Mastrion had not moved in after her and explained that the Respondent's home was not "nice," but had undergone a "major transformation" from when it was purchased. Russo acknowledged that she had seen construction and a lot of extensive renovation being done to the Respondent's home, primarily to the exterior. Russo acknowledged that Mastrion was actively involved in the exterior renovation. Russo explained that she had observed Mastrion carrying wood, cleaning out the backyard, carrying tree branches, "just everything."

Russo denied that on the day of the incident she was looking at the front of the porch rather, she was looking at the side of the home. She stated she was unable to see inside the front door, but acknowledged that she could see Mastrion pulling on the door, trying to get in. Russo also acknowledged that she heard Mastrion saying, "Let me in." Russo denied that the Respondent was holding the door from the inside, but admitted that she saw the Respondent in the kitchen while Mastrion was at the front door. Russo explained that from her viewpoint, there were two windows allowing one to view into the kitchen and living room. Russo acknowledged that while the Respondent was inside the kitchen, he was ignoring Mastrion at the door and not yelling back.

Russo admitted that she had seen the Respondent leave in his vehicle, a Jeep. Russo denied that she had seen how the Respondent left the house to go to his vehicle because by the time she arrived upstairs to her viewpoint, the Respondent was already in

his vehicle. She did not hear any exchange between the Respondent and Mastrion before the Respondent left.

Russo acknowledged that she had come out of her house to meet Mastrion. She agreed that when she saw Mastrion, Mastrion's hands were swollen and explained that they were "red and puffy" but not bleeding or cut. Russo also declared that Mastrion was wearing a pair of jeans with a belt, a T-shirt, and a jacket. She acknowledged that the scratch marks and welts were therefore under the jacket and jeans beginning above the waist and then going down. Russo explained that she remembered this because Mastrion had to undo her belt and pull down her pants. She said there was no ripping, tearing, or damage to the clothes. She testified that Mastrion's hair fell below the shoulder, but could not be certain if she was wearing it down at that time. Russo did agree that Mastrion had said that the Respondent had dragged her down the stairs by her hair. Russo denied being shown injuries on Mastrion's head or scalp, but did state that there was hair falling out, hair in her hands, and hair on her clothing. She disputed the fact that everyone's hair does fall out, but agreed that her hair is always on her brush in the morning or on her pillow at night. Russo then explained that the amount of hair dislodged was "just wisps" - more than one or two strands, but less than a handful.

Russo acknowledged that she knew Mastrion had been a police officer and suggested that she call the police. She then testified that Mastrion did not call the police and agreed that she respected Mastrion's wishes and also did not call the police herself. Russo acknowledged that she had not seen any acts of physical violence between Mastrion and the Respondent. She did explain that during one summer, she had seen the Respondent spray water at Mastrion with a garden hose and then throw the house keys at

her; the house keys did not hit her.

On redirect examination, Russo stated that the spraying with the water hose did not look playful. Russo explained that Mastrion wanted to get into the home, but it was locked and she did not have her keys. The Respondent would not give her the keys and she began yelling. He then threw the keys at her and sprayed her with the hose. Russo further explained that the throw was an overhand one, but it did not look like he used force when throwing the keys. She added that it did not look like the Respondent was trying to hit Mastrion.

Russo also testified that Mastrion had said she did not want to call the police because she was afraid of what the Respondent may do to her and her children. Russo clarified that her direct examination testimony about Mastrion telling her that “this” had been going on for years, was referring to physical, mental and emotional abuse.²

Sergeant Sally Spinosa

Spinosa has been a sergeant in the Department for 11 years and is currently assigned to the Borough of Staten Island Investigations Unit. She stated that she has been with the Investigations Unit for ten years and her present position is Supervisor Investigator. Spinosa stated that the Duty Captain notified her of the Mastrion incident and asked for her help investigating the matter. On August 16, 2008, Spinosa interviewed Mastrion about a domestic incident. The interview took place at the Investigations Unit office in Staten Island. Others present at the interview were Sergeant Memoli and Captain Vigliotti [Department’s Exhibit (DX) 1A and 1B are the interview tape and transcript of Mastrion reporting about a domestic incident that occurred on

² The “this” referred to comes from Russo’s direct examination on page 37, line 14.

August 10, 2008 between 4:00 p.m. and 5:00 p.m. where the Respondent threatened to kill her and her children because she had said upon a divorce she would get what she “deserved” from the Respondent’s pension. DX 2 is a Domestic Incident Report that was also completed in the presence of Spinosa and signed by her and Mastrion.]

During cross-examination, Spinosa acknowledged that she had worked on other domestic violence issues against members of the service during her ten years with the Investigations Unit. She acknowledged that the only actions taken against the Respondent were to place him on modified assignment and have his guns vouchered. However, Spinosa agreed that the Department’s policy in general with regards to domestic violence allegations could be a modified assignment depending on the recommendation of the Duty Captain. Spinosa also agreed that in many domestic violence situations involving “violence and assault” by a member of the service, there would “most probably” be an arrest.

With regards to the Respondent’s modified assignment, Spinosa admitted that she personally processed the paperwork for the modification and the vouchering of his firearms. She agreed that she felt satisfied that all the Respondent’s firearms had been vouchered. She explained that the weapons are accounted for by using the Respondent’s force record and then verified by the firearms unit. Furthermore, Spinosa stated that she usually asks if there are any shotguns or “things” that are not on the force record. She did not recall if Mastrion was asked about guns that were in the house during the vouchering process. Spinosa explained that for a member of the service to reacquire his firearms after being placed on modified assignment, a full and thorough investigation has to be completed.

During redirect examination, Spinosa stated that there are times when an allegation of domestic violence against a member of the service does not lead to an arrest. She also said that sometimes an investigation takes place before an arrest is made. Spinosa testified that in the Respondent's case, the investigation was conducted by another unit.

During recross-examination, Spinosa disputed the notion that in domestic violence situations where a claim about a member of the service putting a gun against an individual's head and threatening the individual would always result in an arrest being made. She also disputed that allegations of repeated physical assaults would also lead to an arrest. Spinosa explained that she would need some evidence that the allegations occurred before making an arrest. On the following redirect, Spinosa testified that as far as she knew, all of the Respondent's weapons were confiscated.

Sergeant Ralph Ciaravalli

Ciaravalli is a 15-year member of the Department currently assigned to the Chief of Detectives Investigations Unit (CDIU). He stated he has been a sergeant for eight years and has been in his current assignment for five years. At CDIU, Ciaravalli said he conducts internal investigations. He interviewed Mastrion on September 9, 2008 about several domestic violence incidents between her and the Respondent including an incident that occurred on or around August 10, 2008. [DX 3A and 3B are the interview tape and transcript.] Ciaravalli testified that to the best of his recollection about the interview, Mastrion had stated that the Respondent was eating in the kitchen after being away or out of the house, when he said to her that she should not think of trying to take

half of his pension. Mastrion told him that the Respondent started stabbing an M&M's jar and then turned to grab her by the neck. She then was able to get free and run out the door. The dog followed her outside whereupon the Respondent said to her, "If anything happens to that dog, I'm gonna kill you and the kids." Ciaravalli declared that when he interviewed Mastrion, she appeared to be distraught.

During cross-examination, Ciaravalli denied being the primary investigator of Mastrion's case when it came to CDIU. Ciaravalli explained that he only conducted the primary interview and that the primary investigator was Sergeant Cinao. Ciaravalli acknowledged knowing that Mastrion was a police officer at one time, but did not recall if she had told him that she was retired.

Sergeant Charles Cinao

Cinao has been with the Department since 1995 and is currently assigned to the Support Services Bureau. He has been a sergeant since 2001. Cinao testified that he worked in the CDIU for approximately three-and-a-half years conducting investigations. He stated that while at CDIU, he was assigned as the lead investigator of the Mastrion case on September 3, 2008. Cinao said he was familiar with the name Christine Mastrion and knew her to be the Respondent's wife. He was also aware that on September 18, 2008, Mastrion had been awarded an Order of Protection against the Respondent by the Richmond County Family Court (DX 4). Cinao testified that according to his review of the records, the Order of Protection was served to the Respondent by the Sheriff's Department [DX 5 is the Sheriff's Certificate of Service].

Cinao testified that on September 23, 2008 he had spoken with Mastrion about all

the incidents that had occurred between her and the Respondent. Cinao said Mastrion had come with her sister and had produced about 20 pages of notes she made about the incidents. Cinao reviewed the notes with Mastrion; some notes had dates and times.³ [DX 6 is a copy of Mastrion's handwritten notes recording five alleged domestic incidents involving the Respondent.] Mastrion told Cinao that she would record the incident right after it happened. Cinao incorporated the notes into the primary case folder explaining that he thought they would be relevant to the investigation. Cinao stated that it was his duty to incorporate the notes into the folder. Moreover, he expressed that the Department has a practice of incorporating similar type notes into the record.

During an intervening *voie dire*, Cinao acknowledged that the notes presented were photocopied legal sheets; he did not receive the originals. He could not recall if Mastrion had the originals with her when she gave them to him. Cinao agreed that the pages of notes looked the same because they were all photocopies. He acknowledged that other than Mastrion's word, there was nothing definitive that would establish whether the notes were made anywhere near the events in question.

On continued direct examination, Cinao said he recalled discussing two incidents with Mastrion during the September 23, 2008 meeting: the first occurring on January 10, 2008 and the second occurring sometime in March or April 2008. Cinao testified that with regards to the January 10 incident, Mastrion told him that she had an argument with the Respondent upstairs about her son and at one point the Respondent pointed his "service revolver" at her head from four feet away and said, "I wish." Mastrion did not say whether a magazine was in the weapon. Cinao testified that with regards to the

³ DX 6 contains only five of the 20 pages of Mastrion's notes. The notes contained in DX 6 all have dates and times.

second incident, Mastrion told him that the Respondent dragged her down the stairs by her hair and that upon reaching the bottom of the stairs he kicked and spat on her. Mastrion told Cinao that she then ran out of the house and went to the house of her neighbor, Russo. Cinao was told that Russo took pictures of her injuries with a cell phone. These injuries were on her hip. Cinao contacted Internal Affairs Bureau (IAB) Group 7, which handles computer and photographic evidence, to retrieve the photos from Russo. IAB was unable to retrieve the photos because Russo had deleted the photos believing that Mastrion was not going to proceed against her husband. Cinao did not know if IAB conducted a forensic search of the hard drive.

Cinao interviewed Mastrion's family members on February 23, 2009. The first was Michael Brown (hereinafter "Michael"), who was Mastrion's brother-in-law. Michael told Cinao that he had never witnessed any actual disputes between the Respondent and Mastrion, but was aware that there were marital problems. Michael told Cinao that Mastrion had appeared at his house after a dispute on several occasions. Furthermore, Mastrion had told Michael that the Respondent threatened her with a gun at one point. Cinao also interviewed Cathy Brown (hereinafter "Cathy"), Michael's wife and Mastrion's sister. Cathy told Cinao that she had never actually observed any of the incidents. However, Cinao expressed that Cathy was the only person that Mastrion confided in about what was happening between her and the Respondent. Cinao expressed he did not know how soon after an incident Mastrion would speak to Cathy. Cathy also told Cinao that on one occasion she had seen "bruises and black-and-blues" on Mastrion's wrist. Cinao could not recall if Cathy had said that there was a time that the Respondent had spoken to her about the incidents.

Cinao testified that he knew that the Respondent was served with an Order of Protection on August 29, 2008 (DX 7). Cinao stated that the Respondent did not immediately notify the Department that he was the subject of an Order of Protection as required. Cinao explained that he knew this because he conferred with IAB on September 30, 2008 to verify whether a log was generated as a result of the notification, but one had not been generated about a month after the Order of Protection was issued.

Cinao stated that he conducted an official Department interview with the Respondent on April 28, 2009. During the interview, Cinao asked the Respondent about the Order of Protection. The Respondent told Cinao that he had not immediately notified the Department upon receiving the Order of Protection because during his prior interview with Staten Island Investigations, he was told that an Order of Protection was probably going to follow the interview in about a week and so he thought that his notification requirement had been satisfied.

During cross-examination, Cinao acknowledged that Mastrion believed that the gun pointed at her by the Respondent had been loaded and a service weapon, which would have been a semi-automatic handgun using magazines. He stated he did not know what kind of service weapon the Respondent had, but thought it was a Glock. Cinao agreed that a person could not see whether the weapon actually was loaded with bullets.

Cinao acknowledged that he had spoken to Russo on the phone and when he knocked on her door during a canvas of the neighbors. The telephone interview was documented on September 29, 2008 and he agreed it was the first contact he had with Russo. Cinao documented that the conversation he had with Russo discussed redness to Mastrion's skin and a possible scratch. Cinao admitted that during the course of his

investigation, he was told by the people he interviewed that extensive renovations were being conducted on the Respondent's home. Cinao agreed that he had learned from the information he received that Mastrion was an active participant in those renovations and that these renovations were occurring at the same time that the claimed incidents took place.

Cinao acknowledged he had interviewed Mastrion on September 29, 2008. During the interview, Mastrion told him that she had her own service weapon still in the home. Cinao agreed that Mastrion had left the Department on September 10, 2004. He acknowledged that on October 9, 2008, another conversation with Mastrion occurred trying to set up an interview with the children and expressing her concerns that the Respondent was still getting overtime and had not been transferred from his command. Cinao agreed that Mastrion was expressing concerns that her husband was not sufficiently being punished.

Cinao further admitted to doing an official Department interview of Mastrion where he checked certain records. He stated that prior to August 2008, no other Orders of Protection were issued in this case. He also denied that any Domestic Incident Reports were filed in this case other than DX 2, or that the police ever responded to the Respondent's house. Cinao acknowledged that he had been told by Mastrion that she had filed for divorce against the Respondent in late August 2008. Cinao denied knowing any family court proceedings prior to August or September 2008. He also denied Mastrion providing him with any cell phone records. Cinao acknowledged that he was aware of an allegation that the Respondent threw a remote control at Mastrion hitting her in the face, though he did not have this discussion with her. Cinao agreed that Mastrion had claimed

she had a medical report. He denied receiving any medical reports from her. Moreover, Cinao stated that he thought being placed on modified assignment happens pretty quickly, within hours not days.

During redirect examination, Cinao stated that he did not remember asking Mastrion for medical records, but explained that he did not ask if there were medical records because she only went to one doctor once. Cinao further testified that he had never seen the photos that Russo took of Mastrion. Cinao explained that what he had noted in his worksheet was that Russo had seen Mastrion's injuries: "the redness and the scratching."

Cinao testified that when Mastrion had said that the Respondent had pointed a "service revolver" at her, he assumed she was referring to a semi-automatic 9-millimeter ("9 mm") pistol. The magazine of a 9 mm pistol is loaded in through the bottom of the pistol's handle whereupon only a quarter of an inch lip of the magazine is revealed. Cinao acknowledged that a trained police officer, as Mastrion was, could have been able to tell whether the pistol had a magazine loaded in it if she was looking at the very bottom of the handle. Cinao further testified that in order to tell whether a magazine had been loaded into the pistol would depend on where the viewer was located that if it is "in someone's hand and it's pointed at you, I would say no. If it's laying on the counter and you're looking at it, then you could see it, yes." Cinao also explained that the service 9 mm pistols are "ready to fire" and that the weapon cannot be placed in a cocked position. While the upper part does lock back to the rear when the pistol becomes empty during firing, the slide can be brought forward with a push of a button. Cinao testified that it is possible for a person to see if the pistol is locked to the rear if it is pointed at

them.

Cinao denied that he had evidence that Mastrion had any firearm in her possession when she resided with the Respondent. Cinao stated that it was not part of the investigation to ascertain if Mastrion obtained her firearm after the Respondent was put on modified assignment. Cinao testified that Mastrion said she had her firearm, but no ammunition or magazines.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent has been with the Department for approximately 13 and one-half years and has worked in the 62 Precinct the entire time. He was promoted two years ago to Detective Third Grade. He stated that he started patrol right after the Police Academy and then worked his way up.

The Respondent stated that he had met Mastrion in the Police Academy and were in the same class. They were both were assigned to the 62 Precinct. Their relationship started as a friendship. They became romantically involved sometime in 2001. The Respondent testified that they started dating and that Mastrion and her three children moved into a townhouse he was renting in Staten Island. He explained that Mastrion had four children from a previous relationship, but that only three lived with her at that point. The Respondent testified that at first they got along well, but after a couple of months they began arguing. The Respondent explained that the arguments had to do with "a

jealousy thing and things of that nature.” The Respondent further explained that Mastrion was diagnosed with high anxiety, for which she took the medication Seroquel. The Respondent testified that he did not know too much about the medication, only that “it was for bipolar and something else.” The Respondent stated that Mastrion’s issues stemmed from her father cheating on her mother with her aunt when she was at a young age. He also stated that Mastrion was in a previous abusive marriage with an alcoholic for 15 years. The Respondent explained that as a result, she had low self-esteem.

The Respondent said that after living together in the townhouse for two years, he could “no longer take the situation no more.” He explained that Mastrion would bother him in front of the children and that “it was really bad.” The Respondent stated that as a result, he got his own apartment and left Mastrion in the townhouse. During this period, the Respondent and Mastrion had not yet married. There had been no family court petitions, no police responses, and no investigations or interventions by the Department. The Respondent stated that even though he had moved out, he was still dating Mastrion “on and off” over the course of three years. The Respondent then testified that in 2005, the two got engaged and that he moved back in with Mastrion. The two married in January 6, 2006.

The Respondent said that he and Mastrion had started making other living arrangements and closed on a house on January 9, 2006. The Respondent stated that the house was 82 or 83 years old, and “in a bad state.” He had plans to renovate the house, but had no significant background in home improvement. The Respondent explained that he was going to be living in the house with Mastrion and two of her kids while it was being renovated. The Respondent testified that it was fair to say that the house increased

the stress levels in an already bad relationship. The Respondent explained that Mastrion had begun accusing him of “checking out” his first cousins. He further explained that while he was wearing her son’s sneakers and driving his grandfather’s truck, she was out shopping. The Respondent explained that they had a joint bank account – if Mastrion had wanted to spend money the way she was spending it, she should have made her own bank account. The Respondent stated that within six months of getting married, he had sought paperwork regarding an uncontested divorce, but he did not complete it. The Respondent explained that he and Mastrion had discussions about filing an uncontested divorce.

The Respondent testified that during the time at the house, there were no family court petitions, no police responses, no physical abuse, no accusations of abuse made by Mastrion, and no third party came to him to tell him that Mastrion was telling others that she was being abused.

With regard to Mastrion’s handwritten notes recording five alleged domestic incidents involving the Respondent (DX 6), the Respondent denied that on November 7, 2007, he had thrown a “flip flop” at her, grabbed her and lifted her by her sweatshirt and thrown her on her son’s bed. He also denied telling Mastrion to “Get the fuck out of my house you ugly. Get the fuck out of my house. I hate you.” The Respondent could not recall the discussion with Mastrion where Mastrion had said that “[The Respondent] was mad because I was asking him why Allison doesn’t take Alexa to the dentist.” The Respondent explained that Alexa was his daughter and that Allison was his daughter’s mother. While the Respondent could not recall the discussion, he stated that he could “definitely see” them having a discussion regarding that subject.

In further discussing the contents of DX 6, the Respondent stated that he could

not recall having a conversation with Mastrion telling her to go ahead and take half the house and that he would find her, and if not, first kill her children, then her nieces and nephews. The Respondent denied saying to Mastrion, "Go ahead and write it down, mail it to whoever you want; just remember I will kill you." Moreover, the Respondent stated that he did not recall being told by Mastrion that she was writing down and documenting the arguments they were having. The Respondent could not recall a January 6, 2008 discussion with Mastrion where he had started cursing in front of her son, Brian, because she had the kitchen sink filled with soap and water to soak dishes but that she was "retarded" because only pots are soaked when "stuff is stuck to it." The Respondent denied that after that discussion, he had grabbed her by the neck, screamed at her, and then squeezed her cheeks so hard that her teeth cut her upper left gum. The Respondent also denied that during this time, Brian was allegedly present and had approached him about having done anything to his mother. The Respondent stated that he would never curse in front of the children, but could not recall if there were times where he did argue in front of them.

Still in regards to the claims in DX 6, the Respondent said he had probably had an argument with Mastrion on January 10, 2008 about not acknowledging her 40th birthday. He denied that after that argument, he threw a hard-covered book at her, hitting her right elbow and hip. The Respondent also denied that on January 25, 2008 he had an argument with Mastrion where he said he would shoot her in the head and that he had told Mastrion that he almost had his daughter's mother killed. The Respondent further denied that on August 10, 2008, he said he would kill Mastrion and her children if she took his money.

The Respondent testified that in March 2008, the house was "coming together."

He explained that he had put granite tops in the kitchen, installed upscale appliances, completed most of the sheetrock, and that the only thing not finished was some of the moldings and some windows had to be put in. The Respondent testified that Mastrion was “pretty involved” with the house and had participated in construction and destruction. The Respondent explained that Mastrion did physical labor as well, such as cutting, hauling, breaking, and priming the walls. The Respondent testified that during this time, both he and she were “banged up” from the work they were doing. He denied that in March 2008, he had dragged her down the stairs by her hair and then kicked and spat on her. The Respondent further denied that on August 10, 2008, he choked Mastrion by the neck, chased her around the house, and threw a telephone at her.

The Respondent testified that in August 2008, he was informed by the Staten Island Investigations Unit that Mastrion had an Order of Protection against the Respondent. The Respondent stated that Mastrion had asked if he wanted the Order of Protection served to him at work or he could go down to the Sheriff’s office and pick it up. The Respondent testified that he picked it up. The Respondent stated that he did not make an official notification to IAB, but did have conversations with members of the service that he worked with that he had received an Order of Protection. He also said that his Commanding Officer, Sergeant McDowell, knew that there was an Order of Protection against him. The Respondent acknowledged that it was his responsibility to make an official notification, but at the time he thought it was sufficient that he had heard from the Department that there was an Order of Protection against him: “I mean, they’re telling me.” The Respondent denied that during the course of his marriage with Mastrion, he had assaulted her or threatened her with physical violence in any way. He

testified that on August 8, 2008, Mastrion filed for divorce and the divorce is now resolved.

During cross-examination, the Respondent acknowledged that he received the Order of Protection from the Sheriff's Department. He could not remember when he had informed his Commanding Officer, but did admit that he did not notify IAB immediately. The Respondent acknowledged that he was put on modified assignment before the Order of Protection was issued.

The Respondent agreed that he had known Mastrion for over ten years and that he had married her in January 2006. In purchasing the home, the Respondent said that he had put more money down on the home than Mastrion because he had more money on his own. He acknowledged that the home was purchased in poor shape. The Respondent admitted that the home turned out to be a "money pit." Moreover, he agreed that renovating the house with Mastrion was very stressful. The Respondent also agreed that it was fair to say that the stress of renovating the house had put some "extra friction" on their relationship.

The Respondent disputed the fact that Mastrion was depressed, but said that she had an anxiety problem and insecurities. He stated that he had not been formally trained in psychology, psychiatry, or in social work and said he would not be able to diagnose a person with bipolar disease or with low self-esteem as an expert. Furthermore, he said he was unfamiliar with the effects of the medication Mastrion was taking. The Respondent also denied having an expert opinion as to what effects bipolar disease has or does not have on a person. He acknowledged that Mastrion had informed him that she was taking the medication, but had never physically seen her take them. Moreover, the Respondent

disputed the fact that the medication had made her mental state better. He explained that “the girl is a sweetheart one second and then accusing me of checking out my cousins another second.” He added that at the dinner table “everything is okay,” but that when he would “watch TV with the boys and there’s a girl on TV, you know, she’ll come in and start with, you put that channel on because you want to check the girl out.” The Respondent stated that this behavior began in the beginning of the relationship. He acknowledged that she exhibited this behavior when she was a police officer and had a firearm, but he did not notify the Department’s Psychological Services Section about it. He explained that he did not know that anxiety and low self-esteem was something to notify the Department about.

The Respondent acknowledged that he wanted to end the relationship with Mastrion. He stated that with regards to Mastrion leaving the house, “I wanted to end the situation regardless of whether she left or I left...I wanted to get out of the relationship. I could care less about the house.” He also stated that when he picked up the mutual divorce agreement was about the time that he had wanted to end their relationship. He acknowledged that he was still residing at the home with her at this point. Furthermore, he acknowledged that he was still residing in the home throughout 2006 and 2007. The Respondent explained that in 2008, he would stay at some points, but at other times he would stay with his parents in New Jersey, or stay at the precinct. He stated that on five or six occasions he slept in the car because they were arguing. He denied searching for and living in a new home. He agreed that he had an opportunity to leave and “walk out,” but denied doing so.

The Respondent acknowledged that the arguments he had with Mastrion were

intense, explaining that they argued “like most people argued.” He admitted there would be screaming involved. He was not sure how often they fought, but that it was “very, very common.” He explained that he would have “little arguments” with her “maybe once...every other day.” The Respondent agreed that it was fair to say that Mastrion could be a frustrating person to deal with at times. He agreed that she was capable of getting him to start an argument with her. Moreover, he agreed that she would annoy him. The Respondent admitted that he would get very, very angry. He denied that he would get frustrated with Mastrion to the point of thinking that he would like to hit her. The Respondent agreed that he got annoyed at Mastrion when she was out spending money at times. Moreover, he acknowledged that they argued over money issues. He explained that they had agreed to put all the money into the house and “make it nice for all of us,” but she was out buying clothes. He testified that he had no problem with this, but that if she was going to do that to use her own money and not money from the joint bank account.

The Respondent agreed that he had discussed getting divorced with Mastrion during the course of their marriage, and that this occurred before the divorce papers were filed. They had discussed dividing the assets if they were to get divorced, but the amount that he wanted and the amount that she wanted had upset each other. He agreed that he felt that he was entitled to a larger portion of the house because he had put more money into it. He denied that he wanted Mastrion out of the house as a result stating that she could keep the house. The Respondent testified that Mastrion had wanted to buy him out, and he had told her she could do so. The Respondent acknowledged that the two are presently divorced.

The Respondent denied that between the end of December 2007 and August 2008, there were times that he had hit Mastrion, or that he had kicked her at times. He disputed the claim that he had dragged Mastrion down the stairs by her hair, kicked her, and then threw her out of her own home; or that he pointed a loaded firearm at her in January 2008 and said, "I wish." The Respondent denied spitting on Mastrion, or threatening numerous times to murder her or her children. The Respondent disputed the notion that he wanted Mastrion out of the home. He explained that they would "split the money up and that's it."

Upon questioning by the Court, the Respondent stated that he did not recall an incident Russo testified to where Mastrion was outside trying to get into the house and he would not let her in. During redirect examination, the Respondent testified that he would not lock Mastrion out of the house; but that if they were arguing and she happened to lock herself out of the house, then he might not open the door "right away." Upon additional questioning by the Court, the Respondent stated that he did not recall an incident that Russo had testified to about spraying Mastrion with a water hose. He testified that he "definitely" could have playfully squirted her with the hose.

The Respondent also pled guilty to the charges in Specification No. 4.

FINDINGS AND ANALYSIS

This case involves numerous allegations of domestic abuse made by the Respondent's former wife, Christine Mastrion, covering a period of time from October 15, 2007 to August 10, 2008.

The evidence regarding all but one of these allegations is based solely upon

hearsay testimony as Mastrion did not testify at this proceeding. The evidence generally is composed of statements made by Mastrion along with entries she claimed to have made in a sort of diary contemporaneously with each referenced incident.

The one allegation that is not based solely on this hearsay testimony involves an alleged incident that occurred in March 2008. In that incident the Respondent is alleged to have pulled Mastrion down the stairs by the hair and thrown her out of the house.

A neighbor, Russo, testified that she heard Mastrion yelling and looking out her window saw Mastrion outside the house screaming for the Respondent to let her into the house. A short time later she invited Mastrion back to her house where she saw injuries that were consistent with Mastrion's claims of having been pulled down the stairs.

Russo's testimony was extremely credible. There is no evidence or other indication that she was biased in any way and as she explained, she was not being a nosey or interfering neighbor, she merely responded to the noise she heard outside her window.

Russo's testimony provides independent corroboration of Mastrion's claims. Additionally Mastrion's outcry in this instance was immediate. To be sure her outcry in this incident was apparently prompted by Russo's entry onto the scene but that does not diminish the promptness of that outcry. The immediacy of the outcry also gives credence to its truth as being a spontaneous explanation of what occurred.

While it is true that Russo claims to have taken pictures which were later deleted from both her camera and computer, the explanation Russo gave for the deletion was credible. She said that Mastrion did not report the incident to the authorities and therefore Russo did not see the need to keep the pictures.

Based on all of the above the Respondent is found Guilty of that part of

Specification No. 2 which relates to the incident of March 2008.

The Court will now address the all of the other domestic violence allegations. These allegations are contained in Specification No. 1, the balance of Specification No. 2 and Specification No. 3. The most serious incident is contained in Specification No 3, where it is alleged that on or about January 10, 2008, during a verbal argument with his wife he pointed his firearm at her head with his finger on the trigger and stated, in sum and substance, "I wish."

The problem with all of these allegations is that they lack independent corroboration such as that provided by Russo regarding the March 2008 incident. Obviously that kind of corroboration is not always available but some independent corroboration or other means of assuring its truthfulness is required where the only evidence is hearsay.

The Department has dismissed a number of allegations which were not supported by Mastrion's handwritten "diary" [DX 6] and apparently feels that the "diary" entries are sufficient corroboration for these remaining charges. The problem is that they are not independent. They rely on the credibility of Mastrion and are no less hearsay then the statements she made to investigators.⁴

This Court has listened to the tapes of the two interviews with Mastrion [DX 1A and 3A.] They certainly sound heartfelt but they also raise credibility questions. For one thing, only the last incident, the one that allegedly occurred on August 10, 2008, which involved a verbal threat, was reported in a timely manner. It is serious but no more

⁴ The Department deleted from Specification No. 1 an alleged incident of October 15, 2007 where the Respondent purportedly said "I will murder your ass." The Department also deleted from Specification No. 2 an alleged incident of November 7, 2007 where the Respondent allegedly threw a shoe at Mastrion, and an incident of January 6, 2008 where he alleged grabbed her by the neck and face causing injury inside her mouth.

serious than other incidents that went unreported for many months and far less serious than the alleged incident of January 10, 2008 where the Respondent allegedly pointed a loaded gun a few inches from her head and said "I wish." Certainly it could be argued that victims of domestic violence often do not report abuse promptly but that does not explain everything.

In her initial interview, on August 10, 2008, Mastrion declined to talk about any additional incidents, saying she had decided whether she wanted to go into those other incidents. Her second interview occurred almost a month later on September 9, 2008. When Mastrion agreed to the second interview she had clearly decided that she was going to report her full history of abuse. In spite of this, nearly half of her interview passed before she mentioned, almost in passing, the alleged incident in which she claimed the Respondent put a loaded gun to her head and said "I wish." That incident had allegedly occurred nine months earlier on January 10, 2008.

Was this something that really happened or was it something she made up as she went along? There is a "diary" entry but judging from the copies placed in evidence; these notations are simply hand written notes on pieces of paper. There is no verification as to when the note was actually written. Given the seriousness of this allegation it is surprising that Mastrion appears not to have taken any action to protect herself, even if she did not report the matter. Certainly that is an issue that would be worth exploring as it potentially bears on her credibility, particularly in light of her claim that the Respondent made verbal threats to kill her on December 27, 2007 and on January 25, 2008, shortly before and shortly after this alleged harrowing experience with the gun. Again, because she did not testify so there is no way to explore this issue and others

which impact on her credibility.

Russo testified that Mastrion mentioned earlier incidents when she spoke with her in March 2008. Russo never specifically mentioned the gun to her head incident which allegedly occurred earlier in time and should have caught Russo's attention and concern if it had been mentioned.

During her second interview, Mastrion said that the Respondent made sure there were no witnesses to his outbursts, but there are ways to surreptitiously record these kinds of events. Beyond the handwritten notes there appears to have been no effort to document the incidents such as by making video and/or oral recordings of the Respondent's alleged outbursts.

In that second interview Mastrion claimed that after one incident she sought medical treatment. Although she said she lied to the doctor about how she was injured no medical records or other documentation was presented to demonstrate that she had an injury and obtained treatment.

In the end, there is no independent evidence to support her claims and no explanation for that failure. Except for the incident in March 2008, all of the proof comes from Mastrion and the notes she made. While hearsay evidence is admissible and may constitute the sole basis for a determination in an administrative proceeding, *Gray v. Adduci* 73 N.Y. 741 (1988), that hearsay evidence must be so substantially reliable and probative that a inference of the existence of a fact may be reasonable drawn, *Gramatan Ave. Associates v State Division of Human Rights*, 45 NY 2d 176, (1978). The uncorroborated hearsay evidence in this case does not meet this test and is therefore insufficient to comprise substantial evidence.

For the above reasons the Respondent is found Not Guilty of Specification Nos. 1 and 3 and Not Guilty of those portions of Specification No. 2 other than what is described as the March 2008 incident.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on July 18, 1996. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of pulling Mastrion down the stairs, spitting on her and kicking her. He has also been found Guilty of failing to report the fact that a Family Court order of protection had been issued against him.

Based on the facts and circumstances of the case this Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. Further this Court recommends that the Respondent forfeit 30 vacation days.

Respectfully submitted,

APPROVED
DEC 22 2010
RAYMOND W. KELLY
POLICE COMMISSIONER

Martin G. Karopkin
Martin G. Karopkin
Deputy Commissioner - Trials

POLICE DEPARTMENT
CITY OF NEW YORK

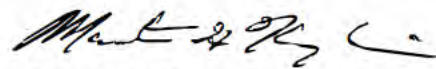
From: Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE LOUIS CAPUTO
TAX REGISTRY NO. 917378
DISCIPLINARY CASE NO. 85394/09

The Respondent received an overall rating of 4.0, "Highly Competent" on his 2007 annual performance evaluation and 4.5, "Extremely Competent" on both his 2005 and 2004 annual evaluations. He has been awarded one Meritorious Police Duty medal, six Excellent Police Duty medals and one Commendation. [REDACTED]
[REDACTED]
[REDACTED]

He has one prior formal disciplinary record. In 2004, he forfeited 8 vacation days as a penalty after he pleaded guilty to engaging in unauthorized off duty employment.

In August, 2009, he was placed in Discipline Monitoring - Level II due to his overall record.

For your consideration.



Martin G. Karopkin
Deputy Commissioner Trials